

# NEW HAMPSHIRE REAL ESTATE COMMISSION

## COMMISSION MEETING

JANUARY 15, 2002

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, January 15, 2002 at 9:00 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

On a motion by Commissioner IKAWA, seconded by Commissioner SMITH, the Commission, present and voting, unanimously appointed Commissioner HEATH to act as the Chairperson, in the absence of Chairman SLATTERY for the January 15, 2002 meeting.

Meeting called to order at 9:00 a.m. by Acting Chairman BARBARA HEATH.

Present: Commissioners MARTIN SMITH, PAULINE IKAWA, BARBARA HEATH, NANCY LeRoy  
Executive Director BETH EMMONS, Investigator ANN FLANAGAN, and Executive Secretary CINDY PATTEN.

- I. Motion by Commissioner IKAWA, seconded by Commissioner SMITH, to approve and accept the minutes of the Commission meeting held on December 18, 2001.

### II. APPOINTMENTS

9:00 a.m. – Equivalency Interviews

<u>CANDIDATE</u>	<u>COMMISSIONER</u>	<u>DETERMINATION</u>
ANTHONY D'AMANTE	SMITH	APPROVED

9:15 a.m. - ROSE MARIE PHILLIPS of Carlson GMAC Real Estate appeared before the Commission to review the procedures and Agency Disclosure Forms that have been recently revised by Carlson GMAC Real Estate after a meeting with Commissioner LeRoy and Investigator Ann Flanagan. Although no revised Agency Disclosure Forms were presented, the Commission agreed with Ms. Phillips that procedures could vary at different real estate offices, as long as they complied with NH RSA 331-A and the NH Code of Administrative Rules.

### III. DISCUSSION

GEORGE C. AUTTELET, through his Attorney, Andrew H. Sullivan, requested the Commission to accept the withdrawal of Complaint File No. 7-2-00 George C. Auttelet & NH Real Estate Commission vs. Wilma Wilson & Margerita Verani (Prudential Verani Realty, Inc.). After discussion and review, and on a motion by Commissioner Smith, seconded by Commissioner LeRoy, the Commission unanimously decided to accept the request to withdraw the complaint. Parties to be so notified.

**OTHER BUSINESS**

1. Thursday, February 7, 2002 was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2001-03-01**

Evaluator: Commissioner LeRoy

Determination: Should be heard, hearing to be scheduled.

(b) **FILE NO. 2001-05-06**

Evaluator: Commissioner LeRoy

Determination: Should be heard, hearing to be scheduled.

(c) **FILE NO. 2001-10-02**

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

The above determinations were unanimously approved.

3. ORDERS

The following Orders were issued by the New Hampshire Real Estate Commission. Copies of the Orders are attached and become part of the official minutes of this meeting.

FILE NO. 2001-02-04 MARY GROUT & GLADYS GARNEAU VS PAUL LEPERE & STEPHEN PARE (THE HAMPTONS REAL ESTATE)

FILE NO. 2001-04-01 RICHARD DUMONT & NEW HAMPSHIRE REAL ESTATE COMMISSION VS LEE FITZGERALD

**PUBLIC HEARING 10:00 AM**

A public hearing was held on the following initial rule proposal amendment:

Rea 301.02 Fees.

- (a) The applicant for each original broker license and renewal thereof shall pay a fee of ~~\$75~~ \$90.
- (b) The applicant for each original salesperson license and renewal thereof shall pay a fee of ~~\$55~~ \$65.
- (c) The broker or salesperson shall pay a fee of \$5 for each duplicate license.
- (d) The broker or salesperson shall pay a fee of \$15 for each license amendment.
- (e) The broker or salesperson shall pay a fee of \$5 for each certificate of license and good standing.
- (f) The applicant for each qualifying examination shall pay a fee of \$65.
- (g) The broker or salesperson shall pay a fee of \$25 or 5% of the face amount of the check, whichever is greater, plus all protest and bank fees for each check, draft or money order dishonored and returned to this office pursuant to RSA 6:11-a.
- (h) The broker or salesperson shall pay a penalty fee of \$50, in addition to the regular renewal fee, for renewal of a license up to 6 months after its expiration.
- (i) Real estate course providers shall pay an evaluation fee of \$30 each time a course is submitted to the commission for accreditation or reaccreditation.
- (j) *Individual real estate licensees shall pay a fee of \$10 for each course submitted to the commission to be evaluated for continuing education credit.*

The following persons were present at the hearing:

Commission: Commissioners BARBARA HEATH, MARTIN SMITH, PAULINE IKAWA, NANCY LeRoy, Executive Director BETH EMMONS, Investigator ANN FLANAGAN, Executive Secretary CINDY PATTEN.

Also in attendance: Kipp Cooper, Rose Marie Phillips, Susan Barry, Deb Mallon and Jennifer Vallee.

The following person(s) addressed the rule amendment to the Commission: Kipp Cooper of NHAR.

This hearing was called by the Commission as part of the formal administrative rulemaking process under RSA 541-A, to solicit input from the public and the real estate industry before proceeding further with the process. The Real Estate Commission will be accepting written testimony from any members



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of the public regarding this rule proposal until the end of the business day of January 15, 2002. On a motion by Commissioner SMITH, seconded by Commissioner LeRoy, the public hearing was adjourned at 10:04 a.m.

- VIII. Motion by Commissioner IKAWA, seconded by Commissioner SMITH to adjourn the meeting. Acting Chairman HEATH adjourned the meeting at 10:05 a.m.

Respectfully submitted,



BARBARA HEATH  
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2001-02-04

MARY GROUT & GLADYS GARNEAU  
V  
PAUL LEPERE & STEPHEN PARE  
(THE HAMPTONS REAL ESTATE)

This matter comes before the Real Estate Commission on the complaint of Mary Grout and Gladys Garneau, who allege violations of NH RSA 331-A:26, IV, V, VII, VIII, XII, XXII, XXVII, XXVIII, XXIX, XXXI, XXXII, and XXXVI by Paul Lepere and Stephen Pare. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Paul Lepere (hereinafter referred to as respondent) was licensed as a real estate broker on 25 March 1985 and is the broker of record for The Hamptons Real Estate, and was so licensed at the time of the alleged violations.

2. Stephen Pare (hereinafter referred to as respondent) was licensed as a real estate salesperson on 15 May 1996 and was licensed as a real estate broker on 22 January 2001. He was licensed as a real estate salesperson and associated with The Hamptons Real Estate at the time of the alleged violations.

3. Mary Grout (hereinafter referred to as complainant) listed her multi-family properties located at 19A&B and 21A&B Bonair Avenue, Hampton, New Hampshire, with respondent Stephen Pare of The Hamptons Real Estate.

4. After having two previous contracts for \$220,000 fall through, complainant Mary Grout accepted offers from David Deschenes of Napoleon Real Estate Development LLC for \$203,000 each with a \$10,000.00 escrow deposit to be held by The Hamptons Real Estate. The Purchase & Sales Agreements were typed up on 31 August 2000, with financing commitment by 01 October 2000 (time being of the essence), no inspection contingency, and contingent on apartments 19A, 19B, and 21B vacated prior to closing. The contract was signed by both buyer and seller on 01 September 2000.

5. Respondent Paul Lepere testified that after about four weeks David Deschenes indicated to him that he was having a problem with financing, and asked Paul Lepere if he would like to be his partner.

6. Respondent Paul Lepere testified that he would purchase the properties in the event that David Deschenes was not able to get financing as a safety net to umbrella the transaction for the sake of the seller.

7. Respondent Paul Lepere testified that he applied for financing at an earlier date, was approved, and his bank did an appraisal.

8. Respondent Stephen Pare testified that he was not privy to the initial meeting between Paul Lepere and David Deschenes when David Deschenes told Paul Lepere he was having financing problems, but respondent Stephen Pare indicated that he found out about it several weeks later and asked his broker, Paul Lepere if they should tell the seller about the buyer's financing problems.

9. Respondent Paul Lepere testified that approximately three weeks to one month before Napoleon was supposed to close that respondent Stephen Pare asked him if they should tell the seller about the buyer's financing problems.

10. Respondent Paul Lepere indicated that he instructed respondent Stephen Pare not to tell the seller about the buyer's financing problems because the properties would be closing one way or another since Paul Lepere would be buying it if David Deschenes did not.

11. Complainant Gladys Garneau testified that the fact that the buyer Paul Lepere is a licensed real estate broker did not appear in writing, nor was it disclosed verbally until the closing.

12. Complainant Mary Grout testified that she would have never known who Paul Lepere was and that he was buying the properties if she did not just happen to recognize him at the closing on 09 November 2000 as someone who worked with her listing agent Stephen Pare, otherwise she would have just assumed he was someone other than David Deschenes but that he was also from Napoleon Real Estate.

13. Complainant Mary Grout testified that she felt that her agents should have told her about Napoleon's problems with financing, and should have told her that the principal broker of the real estate agency was intending to buy her properties.

14. Respondent Stephen Pare testified that the reason they did not tell complainant about the situation was because she was in a very extreme situation of emotional hardship.

15. Complainant Mary Grout testified that she wanted to sell her properties but was not desperate to do so. She had owned them for twenty-seven years since they were first built and had rent paying tenants.



16. Respondent Paul Lepere testified that they never gave complainant an Agency Disclosure Form disclosing their dual agency relationship in the transaction.

17. Complainant Mary Grout testified that she had no Purchase and Sales Agreement with Paul Lepere, but signed the ones they presented at the closing table because she felt that she had no choice but to sell to Paul Lepere because winter was approaching and she had already evicted all the tenants per the P&S with Napoleon Real Estate LLC, who she thought was going to be closing on the properties that day.

18. The Purchase and Sales contracts between complainant Mary Grout and respondent Paul Lepere presented on 09 November 2000 were typed and dated 31 August 2000 with a financing contingency of 01 October 2000, indicating a \$5,000.00 escrow deposits and the bank settlement closing statements indicated \$5,000.00 deposits as well.

19. Respondent Paul Lepere testified that he never made the deposits because he considered it a wash because Napoleon Real Estate had made a \$10,000.00 deposit and since he was closing on the properties instead he gave the \$10,000.00 escrow deposit back to Napoleon Real Estate.

20. Respondent Paul Lepere testified that he used the same information from the Purchase and Sales Agreements between complainant Mary Grout and Napoleon Real Estate for his own Purchase and Sales Agreements with complainant Mary Grout.

21. Respondent Paul Lepere testified that The Hamptons Real Estate received real estate sales commissions paid by complainant Mary Grout from the transactions.

22. Respondent Paul Lepere testified that the original Purchase and Sales contracts between complainant Mary Grout and Napoleon Real Estate were not assignable.

23. Respondent Stephen Pare testified he would never consider listing a property if he was going to buy it himself.

24. Complainant Mary Grout testified that she would not have been willing to pay a real estate agent a commission if he was going to purchase her property.

25. Complainant Gladys Garneau testified that she did not think that they were dealt with honestly or fairly, and that it was not up to their agents to make the decision that they would turn around and sell the properties to their broker, and that they should have been entitled to the \$10,000.00 deposit after Napoleon defaulted on the contracts.

26. Respondents Paul Lepere and Stephen Pare both testified that Paul Lepere has helped many other customers in the past by becoming involved as a principal to the transaction to provide an umbrella when things looked like they might fall apart.

27. Complainant Gladys Garneau indicated that he did not do it for the other two contracts for their property that fell apart, and in his other examples, the clients were aware of his involvement.

28. Respondent Paul Lepere testified that in the other cases the parties to the transactions were aware of his involvement.

29. Respondent Paul Lepere testified that he never told complainants that Napoleon Real Estate was in default.

30. Respondent Paul Lepere testified that by making application for financing there was an intention on his part to acquire the properties.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondents purposefully never informed their client regarding the problems the buyer David Deschenes was having with financing and that the 01 October 2000 financing contingency (time is of the essence) was not met. Paul Lepere knew about the problem early into the transaction and Steven Pare became aware of it almost a month before the closing date, which was a few weeks after Paul Lepere found out. It is unconscionable that they stood by silently while complainant continued the eviction of her tenants without informing her of the status of the contract with Napoleon Real Estate. Not only did they fail to inform her of the status of the transaction with Napoleon, they failed to inform her that the principal broker Paul Lepere had intentions of purchasing the properties. Undisclosed dual agency becomes suspicious to the utmost when the non-disclosure of the relationship is regarding the real estate agent as a principal to the transaction. Respondents indicated that they did not disclose the situation to complainant Mary Grout in order to protect her emotionally, rather than to take advantage of the situation in the transaction. The Commission finds this attitude on the part of respondents, if it is their true motivation, to be condescending and demeaning to complainant. The Commission found complainant and her daughter Gladys Garneau to be very intelligent and knowledgeable in real estate matters, and certainly not emotionally fragile. Respondents defrauded complainant Mary Grout of her choice and ability to make her own decisions. Perhaps respondents felt that an older widowed female of non-native nationality managing apartment buildings was someone in need of their protection. Others might see her as someone to potentially take advantage of. Regardless of respondents' true reasons for their unprofessional, incompetent, and untrustworthy behavior, the Commission finds it unacceptable. The Commission holds respondent Stephen Pare somewhat less accountable than the principal broker Paul Lepere since he was specifically instructed by his broker not to disclose the situation. Then comes the matter of the deposit. Respondent Paul Lepere released the \$10,000.00 deposit on the defaulted contracts with Napoleon Real Estate back to David Deschenes without the knowledge or consent of complainant Mary Grout, and he falsified the fact he never made the deposits indicated on his Purchase and Sales Agreements with



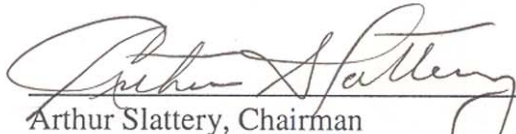
complainant Mary Grout, as indicated on the bank settlement closing statements. Respondent Paul Lepere testified that he never made the deposits because he considered it a wash because Napoleon had made a \$10,000.00 deposit and since he was closing on the property instead he gave the escrow deposit back to Napoleon. In effect respondent Paul Lepere converted the funds from David Deschenes to his own use by allocating them to his Purchase and Sales Agreements with complainant Mary Grout, and felt that "it all came out in the wash." Not only did respondent Paul Lepere substitute his contracts for Napoleon's contracts, in his own mind he used Napoleon's deposit as well, which really did not exist because he gave it back to David Deschenes. The Commission strongly advises complainant to make a claim on Paul Lepere's broker's bond for the \$10,000.00 deposit he illegally (pursuant to RSA 331-A:13, IV) released from his escrow account. Whether The Hamptons Real Estate should refund the real estate sales commission it received from complainant Mary Grout would be a matter for the civil courts to decide.

Therefore, the Commission rules that respondent Paul Lepere violated NH RSA 331-A:26, IV, V, VII, VIII, XII, XXII, XXVIII, XXIX, XXXI, XXXII, and XXXVI. The Commission rules that respondent Stephen Pare violated NH RSA 331-A:26, IV, V, XII, XXVIII, XXIX, XXXI, XXXII, and XXXVI.

The Commission hereby Orders that respondent Paul Lepere show proof of attendance at a New Hampshire Real Estate Commission accredited 40 hour pre-licensing course and pay a disciplinary fine to the State of New Hampshire General Fund in the amount of \$1,000.00 per offense for a total of \$11,000.00 within six (6) months of the date of this Order. The Commission Orders that respondent Stephen Pare show proof of attendance at a New Hampshire Real Estate Commission accredited 40 hour pre-licensing course within six (6) months of the date of this Order.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.


Commissioner Heath evaluated this case and did not take part in the hearing or decision.

  
Arthur Slattery, Chairman

1-17-02  
DATE

  
Nancy LeRoy, Commissioner

Jan 15, 2002  
DATE

  
Pauline Ikawa, Commissioner

1/15/02  
DATE



NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2001-04-01

RICHARD DUMONT  
&  
NEW HAMPSHIRE REAL ESTATE COMMISSION  
VS  
LEE FITZGERALD

This matter comes before the Real Estate Commission on the complaint of Ann Flanagan, its Investigator and Richard Dumont, who allege violations of NH RSA 331-A:26, V, VII, VIII, XXVIII, and New Hampshire Code of Administrative Rules Rea 702.02 by Lee Fitzgerald. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Lee Fitzgerald (hereinafter referred to as respondent) was licensed as a real estate salesperson on 08 May 1990 and a real estate broker on 07 September 1994, and was so licensed as an associate broker for Century 21 Dumont Associates at the time of the alleged violations.

2. Richard Dumont (hereinafter referred to as complainant) was respondent's principal broker at Century 21 Dumont Associates at the time of the alleged violations. Complainant terminated the services of respondent and reported the circumstances to the New Hampshire Real Estate Commission as required pursuant to RSA 331-A:17, VII.

3. On 16 November 1999 Century 21 Dumont Associates entered into an exclusive listing agreement with Lee Fitzgerald as the listing agent, to sell a farm with a 65 acre parcel owned by Robert and Linda Wilson, located at 69 Deerfield Road, Raymond, New Hampshire.

4. The sellers Robert and Linda Wilson entered into a purchase and sales agreement to sell the 65 acre farm to Mark Kitner. The transaction closed on 30 May 2000.

5. On 25 March 2000 prior to closing on the 65 acre farm with Robert and Linda Wilson, Mark Kitner entered into an exclusive listing agreement with Doris Habbick of Pat Bennett Realty as the listing agent to sell his equitable title ownership interest in the property. The terms of the listing included a provision not to market the property in the Multiple Listing Services.

6. On 19 April 2000 respondent became aware that Pat Bennett Realty was marketing the property at 69 Deerfield Road, Raymond, New Hampshire because of

some colored picture advertisements of the property. Respondent called Pat Bennett Realty and was told that Pat Bennett Realty had a listing with Mark Kitner.

7. Respondent testified that Mark Kitner (although unsubstantiated) told respondent he did not have a listing with Pat Bennett Realty, and since Pat Bennett Realty had not entered the property into the Multiple Listing Services, respondent did not believe Pat Bennett Realty had a listing with Mark Kitner for the property.

8. Respondent testified that she was continuing to receive inquiries regarding the property during the time it was under contract with the sellers Robert and Linda Wilson and the buyer Mark Kitner, and that Peter and Theresa Cleaves inquired of respondent about the property at that time.

9. While working as an associate broker for Century 21 Dumont Associates, respondent initiated a purchase and sales agreement between Mark Kitner as the seller and Peter and Theresa Cleaves as the buyers for a portion (the farm and 7 of the 65 acres) of the property located at 69 Deerfield Road, Raymond, New Hampshire. The agreement was originated on 17 May 2000 and signed on 14 June 2000, and indicated that Century 21 Dumont Associates/Lee Fitzgerald represented both seller and buyers.

10. Respondent did not have a listing contract with Mark Kitner and did not have a buyer agency agreement with Peter and Theresa Cleaves, and there was no Dual Agency Disclosure Form.

11. Three (3) deposit checks (\$1,000, \$4,000, and \$20,000) for a total of \$25,000 were made out to Century 21 Dumont as per the Kitner to Cleaves purchase and sales agreement (C-21 Dumont or Assigns).

12. Respondent admits she signed Jacqueline Dumont's name and assigned the checks to Lee Fitzgerald Real Estate Services and deposited the three checks into her Lee Fitzgerald Real Estate Services account. Respondent had no check signing or assigning authority from Century 21 Dumont Associates.

13. Respondent typed up the Kitner to Cleaves purchase and sales agreement and it was executed at the Century 21 Dumont Associates office. Respondent did not inform or present the contract to anyone at Century 21 Dumont Associates or to anyone at the listing agency Pat Bennett Realty.

14. Respondent entered into a "Commission Statement" signed by the seller Mark Kitner on 16 June 2000 (after the date on the Kitner to Cleaves purchase and sales agreement) indicating that Mark Kitner would pay respondent a 5% commission.

15. The HUD Closing Settlement Statement indicated that respondent received the above 5% commission for the Kitner to Cleaves transaction when it closed on 08 February 2001.



16. Pat Bennett Realty put a lien on the property because respondent did not include it as the listing agency on the Kitner to Cleaves purchase and sales agreement. Neither Pat Bennett Realty or Century 21 Dumont Associates received commissions when the transaction closed. However, this was resolved through a civil settlement agreement whereby respondent relinquished her commission. There was no monetary harm to the seller, buyer, Century 21 Dumont Associates, or Pat Bennett Realty.

17. Respondent testified that at the time of the alleged violations she was in the process of leaving Century 21 Dumont Associates and starting her own agency Lee Fitzgerald Real Estate Services.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

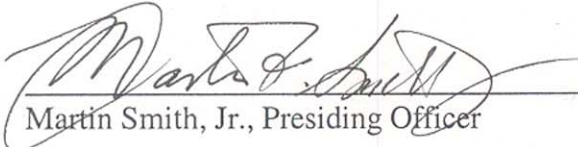
Buyers and sellers in real estate transactions could have concerns and feel at risk when large sums of escrow money are not where they are contractually supposed to be. Counsel for respondent made the point that the funds were just as secure in the Lee Fitzgerald Real Estate Services escrow account as they would have been in the Century 21 Dumont Associates escrow account, and that these funds were presented and accounted for when the transaction closed, so there was no attempt by respondent to convert these funds to her own personal use. However, to sign someone else's name without that person's knowledge or consent, and without authority assign escrow funds to an account other than that to which the checks were written and contractually authorized is unacceptable regardless of the intent or outcome. Therefore, the Commission rules that respondent did violate NH RSA 331-A:26, V and New Hampshire Code of Administrative Rules Rea 702.02, but did not violate RSA 331-A:26, VII or VIII.

Respondent entered into "Commission Statement" with Mark Kitner to pay a respondent a 5% commission. This Commission Statement resembles a listing agreement but does not contain all the requirements such as asking price and expiration date, but it was entered into shortly after the Kitner to Cleaves purchase and sales agreement. The Kitner to Cleaves purchase and sales agreement indicated a fiduciary relationship between Mark Kitner and respondent. This put Mark Kitner in the situation of possibly owing two real estate commissions considering his listing agreement with Pat Bennett Realty. Respondent knew that Mark Kitner purchased the property with the intent to subdivide it. When Peter and Theresa Cleaves inquired about the property it was still marketed by respondent through Century 21 Dumont on behalf of Robert and Linda Wilson. Because Robert and Linda Wilson and Mark Kitner had not yet closed on it, respondent was still obligated to present offers on behalf of her clients Robert and Linda Wilson. Respondent's fiduciary duty was to the Wilsons. The Cleaves offer should have been presented as a back up offer to the Wilsons. If Mark Kitner had failed to close for some reason, the Wilsons could have been in a potentially better position with a back up offer. Therefore, the Commission rules that respondent did violate NH RSA 331-A:26, XXVIII.

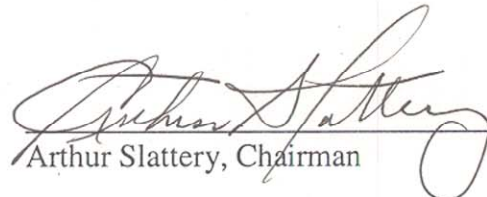
The Commission hereby Orders that respondent show proof of attendance at a 40 hour Commission accredited pre-licensing course, and pay a disciplinary fine to the State of New Hampshire General Fund in the amount of \$1,500 for each offense for a total of \$4,500 within one (1) year of the date of this Order. The Commission further Orders that for one (1) year from the date of this Order, any escrow deposits received as payable to respondent be held by an attorney.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

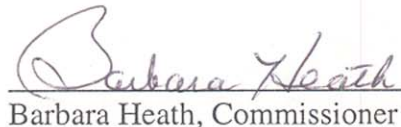
Commissioner LeRoy evaluated this case and did not take part in the hearing or decision.

  
Martin Smith, Jr., Presiding Officer


1-15-02  
DATE

  
Arthur Slattery, Chairman

1-17-02  
DATE

  
Barbara Heath, Commissioner

1-15-02  
DATE

  
Pauline Ikawa, Commissioner

1/15/02  
DATE